

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**SUSAN BARTLETT, As Administratrix of the Estate
of DONALD S. IVY, JR., and SUSAN BARTLETT
as m/n/g of I.S.I., individually,**

Plaintiffs,

-against-

**THE CITY OF ALBANY, OFFICER MICHAEL
MAHANY, OFFICER JOSHUA SEARS, OFFICER
CHARLES SKINKLE, in their individual and
official capacities,**

**ANSWER TO AMENDED
COMPLAINT WITH
AFFIRMATIVE
DEFENSES**

1:15-cv-1073 (TJM/DJS)

Jury Trial Demanded.

Defendants.

The Defendants, The City of Albany, Officer Michael Mahany, Officer Joshua Sears and Officer Charles Skinkle, by and through their attorneys, The Rehfuss Law Firm, P.C., Of Counsel to William G. Kelly, Jr., Interim Corporation Counsel for the City of Albany, New York, as and for an Answer to the Amended Complaint herein, dated June 20, 2017, hereby state and allege as follows:

1. Deny each and every allegation contained in Paragraph “1” of the Plaintiffs’ Amended Complaint.
2. Deny each and every allegation contained in Paragraph “2” of the Plaintiffs’ Amended Complaint.
3. Deny each and every allegation contained in Paragraph “3” of the Plaintiffs’ Amended Complaint.
4. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “4” of the Plaintiffs’ Amended Complaint.

5. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “5” of the Plaintiffs’ Amended Complaint.
6. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “6” of the Plaintiffs’ Amended Complaint.
7. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “7” of the Plaintiffs’ Amended Complaint.
8. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “8” of the Plaintiffs’ Amended Complaint.
9. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “9” of the Plaintiffs’ Amended Complaint.
10. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “10” of the Plaintiffs’ Amended Complaint.
11. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “11” of the Plaintiffs’ Amended Complaint.
12. Admit the allegations contained in paragraph “12” of the Plaintiffs’ Amended Complaint.
13. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “13” of the Plaintiffs’ Amended Complaint.
14. Admit the allegations contained in paragraph “14” of the Plaintiffs’ Amended Complaint.
15. Admit the allegations contained in paragraph “15” of the Plaintiffs’ Amended Complaint.
16. Admit the allegations contained in paragraph “16” of the Plaintiffs’ Amended Complaint.
17. Admit that a paper purporting to be a Notice of Claim was filed, but deny each and every other remaining allegation contained in paragraph “17” of the Plaintiffs’ Amended Complaint.

18. Admit that a paper purporting to be a Notice of Claim was filed, but deny each and every other remaining allegation contained in paragraph “18” of the Plaintiffs’ Amended Complaint.
19. Admit that a paper purporting to be a Notice of Claim was filed, but deny each and every other remaining allegation contained in paragraph “19” of the Plaintiffs’ Amended Complaint.
20. Admit the allegations contained in paragraph “20” of the Plaintiffs’ Amended Complaint.
21. Deny each and every allegation contained in Paragraph “21” of the Plaintiffs’ Amended Complaint.
22. Deny each and every allegation contained in Paragraph “22” of the Plaintiffs’ Amended Complaint.
23. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “23” of the Plaintiffs’ Amended Complaint.
24. Admit the allegations contained in paragraph “24” of the Plaintiffs’ Amended Complaint.
25. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “25” of the Plaintiffs’ Amended Complaint.
26. Deny each and every allegation contained in paragraph “26” of the Plaintiffs’ Amended Complaint.
27. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “27” of the Plaintiffs’ Amended Complaint.
28. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “28” of the Plaintiffs’ Amended Complaint.
29. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “29” of the Plaintiffs’ Amended Complaint.

30. Deny each and every allegation contained in paragraph “30” of the Plaintiffs’ Amended Complaint.
31. Deny each and every allegation contained in paragraph “31” of the Plaintiffs’ Amended Complaint.
32. Deny each and every allegation contained in paragraph “32” of the Plaintiffs’ Amended Complaint.
33. Deny each and every allegation contained in paragraph “33” of the Plaintiffs’ Amended Complaint.
34. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “34” of the Plaintiffs’ Amended Complaint.
35. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “35” of the Plaintiffs’ Amended Complaint.
36. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “36” of the Plaintiffs’ Amended Complaint.
37. Deny each and every allegation contained in paragraph “37” of the Plaintiffs’ Amended Complaint.
38. Deny each and every allegation contained in paragraph “38” of the Plaintiffs’ Amended Complaint.
39. Deny each and every allegation contained in paragraph “39” of the Plaintiffs’ Amended Complaint.
40. Deny each and every allegation contained in paragraph “40” of the Plaintiffs’ Amended Complaint.

41. Deny each and every allegation contained in paragraph “41” of the Plaintiffs’ Amended Complaint.
42. Deny each and every allegation contained in paragraph “42” of the Plaintiffs’ Amended Complaint.
43. Deny each and every allegation contained in paragraph “43” of the Plaintiffs’ Amended Complaint.
44. Deny each and every allegation contained in paragraph “44” of the Plaintiffs’ Amended Complaint.
45. Deny each and every allegation contained in paragraph “45” of the Plaintiffs’ Amended Complaint.
46. Deny each and every allegation contained in paragraph “46” of the Plaintiffs’ Amended Complaint.
47. Deny each and every allegation contained in paragraph “47” of the Plaintiffs’ Amended Complaint.
48. Deny each and every allegation contained in paragraph “48” of the Plaintiffs’ Amended Complaint.
49. Deny each and every allegation contained in paragraph “49” of the Plaintiffs’ Amended Complaint.
50. Deny each and every allegation contained in paragraph “50” of the Plaintiffs’ Amended Complaint.
51. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “51” of the Plaintiffs’ Amended Complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “52” of the Plaintiffs’ Amended Complaint.

53. Deny each and every allegation contained in paragraph “53” of the Plaintiffs’ Amended Complaint.

54. Deny each and every allegation contained in paragraph “54” of the Plaintiffs’ Amended Complaint.

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56. Deny each and every allegation contained in paragraph “56” of the Plaintiffs’ Amended Complaint.

57. Deny each and every allegation contained in paragraph “57” of the Plaintiffs’ Amended Complaint.

58. Deny each and every allegation contained in paragraph “58” of the Plaintiffs’ Amended Complaint.

59. Deny each and every allegation contained in paragraph “59” of the Plaintiffs’ Amended Complaint.

60. Deny each and every allegation contained in paragraph “60” of the Plaintiffs’ Amended Complaint.

61. Deny each and every allegation contained in paragraph “61” of the Plaintiffs’ Amended Complaint.

62. Deny each and every allegation contained in paragraph “62” of the Plaintiffs’ Amended Complaint.

63. Deny each and every allegation contained in paragraph “63” of the Plaintiffs’ Amended Complaint.

64. Deny each and every allegation contained in paragraph “64” of the Plaintiffs’ Amended Complaint.

65. Admit, deny and deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “1” through “64” of the Plaintiffs’ Amended Complaint, as if fully set forth herein.

66. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “66” of the Plaintiffs’ Amended Complaint.

67. Deny each and every allegation contained in paragraph “67” of the Plaintiffs’ Amended Complaint.

68. Deny each and every allegation contained in paragraph “68” of the Plaintiffs’ Amended Complaint.

69. Deny each and every allegation contained in paragraph “69” of the Plaintiffs’ Amended Complaint.

70. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “70” of the Plaintiffs’ Amended Complaint.

71. Deny each and every allegation contained in paragraph “71” of the Plaintiffs’ Amended Complaint.

72. Deny each and every allegation contained in paragraph “72” of the Plaintiffs’ Amended Complaint.

73. Deny each and every allegation contained in paragraph “73” of the Plaintiffs’ Amended Complaint.

74. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “74” of the Plaintiffs’ Amended Complaint.

75. Deny each and every allegation contained in paragraph “75” of the Plaintiffs’ Amended Complaint.

76. Deny each and every allegation contained in paragraph “76” of the Plaintiffs’ Amended Complaint.

77. Deny each and every allegation contained in paragraph “77” of the Plaintiffs’ Amended Complaint.

78. Deny each and every allegation contained in paragraph “78” of the Plaintiffs’ Amended Complaint.

79. Deny each and every allegation contained in paragraph “79” of the Plaintiffs’ Amended Complaint.

80. Admit, deny and deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “1” through “79” of the Plaintiffs’ Amended Complaint, as if fully set forth herein.

81. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “81” of the Plaintiffs’ Amended Complaint.

82. Deny each and every allegation contained in paragraph “82” of the Plaintiffs’ Amended Complaint.

83. Deny each and every allegation contained in paragraph “83” of the Plaintiffs’ Amended Complaint.

84. Deny each and every allegation contained in paragraph “84” of the Plaintiffs’ Amended Complaint.

85. Deny each and every allegation contained in paragraph “85” of the Plaintiffs’ Amended Complaint.

86. Deny each and every allegation contained in paragraph “86” of the Plaintiffs’ Amended Complaint.

87. Deny each and every allegation contained in paragraph “87” of the Plaintiffs’ Amended Complaint.

88. Deny each and every allegation contained in paragraph “88” of the Plaintiffs’ Amended Complaint.

89. Deny each and every allegation contained in paragraph “89” of the Plaintiffs’ Amended Complaint.

90. Admit, deny and deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “1” through “89” of the Plaintiffs’ Amended Complaint, as if fully set forth herein.

91. Deny each and every allegation contained in paragraph “91” of the Plaintiffs’ Amended Complaint.

92. Admit, deny and deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “1” through “91” of the Plaintiffs’ Amended Complaint, as if fully set forth herein.

93. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “93” of the Plaintiffs’ Amended Complaint.

94. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “94” of the Plaintiffs’ Amended Complaint.

95. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “95” of the Plaintiffs’ Amended Complaint.

96. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “96” of the Plaintiffs’ Amended Complaint.

97. Deny each and every allegation contained in paragraph “97” of the Plaintiffs’ Amended Complaint.

98. Deny each and every allegation contained in paragraph “98” of the Plaintiffs’ Amended Complaint.

99. Deny each and every allegation contained in paragraph “99” of the Plaintiffs’ Amended Complaint.

100. Deny each and every allegation contained in paragraph “100” of the Plaintiffs’ Amended Complaint.

101. Deny each and every allegation contained in paragraph “101” of the Plaintiffs’ Amended Complaint.

102. Deny each and every allegation contained in paragraph “102” of the Plaintiffs’ Amended Complaint.

103. Deny each and every allegation contained in paragraph “103” of the Plaintiffs’ Amended Complaint.

104. Deny each and every allegation contained in paragraph “104” of the Plaintiffs’ Amended Complaint.

105. Deny each and every allegation contained in paragraph “105” of the Plaintiffs’ Amended Complaint.

106. Admit, deny and deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “1” through “105” of the Plaintiffs’ Amended Complaint, as if fully set forth herein.

107. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “107” of the Plaintiffs’ Amended Complaint.

108. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “108” of the Plaintiffs’ Amended Complaint.

109. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “109” of the Plaintiffs’ Amended Complaint.

110. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “110” of the Plaintiffs’ Amended Complaint.

111. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “111” of the Plaintiffs’ Amended Complaint.

112. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “112” of the Plaintiffs’ Amended Complaint.

113. Deny each and every allegation contained in paragraph “113” of the Plaintiffs’ Amended Complaint.

114. Deny each and every allegation contained in paragraph “114” of the Plaintiffs’ Amended Complaint.

115. Deny each and every allegation contained in paragraph “115” of the Plaintiffs’ Amended Complaint.

116. Deny each and every allegation contained in paragraph “116” of the Plaintiffs’ Amended Complaint.

117. Deny each and every allegation contained in paragraph “117” of the Plaintiffs’ Amended Complaint.

118. Deny each and every allegation contained in paragraph “118” of the Plaintiffs’ Amended Complaint.

119. Deny each and every allegation contained in paragraph “119” of the Plaintiffs’ Amended Complaint.

120. Deny each and every allegation contained in paragraph “120” of the Plaintiffs’ Amended Complaint.

121. Deny each and every allegation contained in paragraph “121” of the Plaintiffs’ Amended Complaint.

122. Deny each and every allegation contained in paragraph “122” of the Plaintiffs’ Amended Complaint.

123. Deny each and every allegation contained in paragraph “123” of the Plaintiffs’ Amended Complaint.

124. Deny each and every allegation contained in paragraph “124” of the Plaintiffs’ Amended Complaint.

125. Admit, deny and deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “1” through “124” of the Plaintiffs’ Amended Complaint, as if fully set forth herein.

126. Deny each and every allegation contained in paragraph “126” of the Plaintiffs’ Amended Complaint.

127. Deny each and every allegation contained in paragraph “127” of the Plaintiffs’ Amended Complaint.

128. Deny each and every allegation contained in paragraph “128” of the Plaintiffs’ Amended Complaint.

129. Deny each and every allegation contained in paragraph “129” of the Plaintiffs’ Amended Complaint.

130. Deny each and every allegation contained in paragraph “130” of the Plaintiffs’ Amended Complaint.

131. Deny each and every allegation contained in paragraph “131” of the Plaintiffs’ Amended Complaint.

132. Deny each and every allegation contained in paragraph “132” of the Plaintiffs’ Amended Complaint.

133. Deny each and every allegation contained in paragraph “133” of the Plaintiffs’ Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

134. The actions set forth in the Amended Complaint are barred by the applicable statute of limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

135. The Plaintiffs have failed to obtain personal jurisdiction over the answering Defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

136. That the Plaintiffs have failed to comply with the applicable provisions of the General Municipal Law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

137. That the Plaintiffs have failed to state a cause of action upon which relief can be granted.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

138. That the Plaintiffs are not members of a protected group.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

139. Whatever injuries the Plaintiffs may have sustained at the time and place alleged in the Amended Complaint were in whole or in part, or were contributed to by the culpable conduct and want of care on the part of the Plaintiffs, or by someone over whom the answering Defendants had no control, and without any negligence or fault or want of care on the part of the answering Defendants.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

140. That any and all acts of the answering Defendants, or servants and employees of the answering Defendants, were performed in good faith and without malice.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

141. That there was no malice, intent or design on the part of the answering Defendants, their servants or employees, to injure the Plaintiffs.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

142. That any actions on the part of the answering Defendants and their agents, officers and employees were justified.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

143. That all acts and statements of answering Defendants were made in good faith, in the public's interest and without malice toward Plaintiffs or anyone else.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

144. That based upon the aforesaid, the answering Defendants, their agents and/or employees acted with probable cause and in accordance with lawful procedure and were justified in all of their actions at the aforesaid time and place.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

145. Whatever injuries and damages may have been sustained by Plaintiffs were sustained by reason of Plaintiffs' own intentional and wrongful conduct.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

146. That it was not clear at the time of the official acts herein that an interest asserted by Plaintiffs was protected by federal statute or the Constitution of the United States.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

147. That, upon information and belief, Plaintiffs' economic loss, if any, as specified in CPLR 4545, was replaced or indemnified, in whole or in part, from collateral sources and answering Defendants are entitled to have the Court consider same in determining such special damages as provided in CPLR 4545.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

148. The answering Defendants' liability to the Plaintiffs, if any, is limited pursuant to Article 16 of the Civil Practice Law and Rules.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

149. That the Defendants exercised reasonable care in the handling of this matter.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

150. That the Plaintiffs have failed to state a cause of action under the federal or New York State Constitutions.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

151. That the Defendants did not intentionally place the Plaintiff in fear of imminent harmful or offensive contact.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

152. That the Defendants did not possess the real or apparent ability to cause imminent and harmful bodily contact with the Plaintiff.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

153. That the Defendants did not intend to confine the Plaintiff.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

154. That the conduct of the Defendants was not extreme or outrageous.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

155. That the Defendants were not deliberately indifferent to the Plaintiffs' constitutional rights.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

156. A cause of action sounding in negligence cannot exist when the same facts are used to allege the intentional torts of assault and a §1983 excessive force claim.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

157. That there was not a significant interruption of the Plaintiff's liberty of movement.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

158. That the Plaintiff was not subject to an improper seizure.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

159. That any force used against the Plaintiff was objectively reasonable.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

160. That the Plaintiffs' equal protection rights were not violated.

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

161. That the Plaintiffs are not entitled to collect punitive damages from a municipality.

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

162. That at all times herein mentioned, the answering Defendants were acting in their official, public capacity, in a proper public forum and their actions, activities and spoken words were unconditionally and unqualifiedly privileged.

AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE

163. That any force used by the answering Defendants was both reasonable and necessary and not excessive under the facts and circumstances.

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

164. That the conduct of the answering Defendants, their agents, officers and employees does not shock the conscience of the Court.

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

165. That the answering Defendants have no policy or custom to deprive citizens of their constitutional rights.

AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE

166. Plaintiffs have failed to mitigate any of their alleged damages, and to the extent of such failure to mitigate, any damages awarded to Plaintiffs should be reduced accordingly.

AS AND FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE

167. Plaintiffs' claims are barred by the doctrines of collateral estoppel and res judicata.

AS AND FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE

168. Defendants' actions were not undertaken with discriminatory intent.

AS AND FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE

169. Plaintiffs have improperly split their causes of action.

AS AND FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE

170. Plaintiffs' causes of action are barred by the Intra-Corporate Conspiracy Doctrine.

AS AND FOR A THIRTY-EIGHTH AFFIRMATIVE DEFENSE

171. That the Defendants' actions were not the sole or contributing cause of the Plaintiff decedent's death.

AS AND FOR A THIRTY-NINTH AFFIRMATIVE DEFENSE

172. That the actions, negligence and conduct of the Plaintiff decedent contributed to his own death.

AS AND FOR A FOURTIETH AFFIRMATIVE DEFENSE

173. That the Plaintiffs are unable to properly plead or prove an 8th Amendment violation.

WHEREFORE, Defendants, The City of Albany, Officer Michael Mahany, Officer Joshua Sears and Officer Charles Skinkle, in their individual capacities, demand judgment dismissing the Plaintiffs' Amended Complaint, together with the costs, disbursements and attorneys' fees incurred in the defense of this action, plus whatever other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the answering Defendants demand a trial by jury in this action.

DATED: July 6, 2017

S/ Stephen J. Rehfuss
Stephen J. Rehfuss, Esq.
NDNY Bar Roll No. 102421
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